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IN THE SUPREME COURT OF THE STATE OF UTAH

HIDDEN MEADOWS DEVELOPMENT COMPANY, :

Plaintiff and Respondent, :

DEE MILLS AND EVELYN I. MILLS, his
wife, MILTON C. CHRISTENSEN, aka
MILTON A. CHRISTENSEN, PARADISE
VALLEY ESTATES, INC., LAKE MILLS
COMPANY, a Limited Partnership, :

BRIEF OF APPELLANT

First Defendants and
Appellants, :

and CAROLE LEE CHRISTENSEN, formerly CAROLE
LEE DAVIS, ENVIRONMENTAL RESOURCES,
INC., INTERNATIONAL ENVIRONMENTAL
SCIENCES, a Limited Partnership, JOHN
DENNIS HIGGINSON and SHERREL HIGGINSON,
aka RAYMA SHERREL W. HIGGINSON, his
wife, R. W. DAVIS LIVESTOCK COMPANY,
VERL ROTH LISBERGER, EVE RHODES,
EVELYN I. MILLS TRUST, FIRST SECURITY
BANK OF UTAH, N.A., and DALE A. ALLSOP
and DONNA B. ALLSOP, his wife, :

NOS 15027
15157
15188

Second Defendants and
Appellants. :

BRIEF OF MILTON C. CHRISTENSEN, aka MILTON A. CHRISTENSEN,
PARADISE VALLEY ESTATES, INC., LAKE MILLS COMPANY,
a Limited Partnership, CAROLE LEE CHRISTENSEN, formerly
CAROLE LEE DAVIS, and ENVIRONMENTAL RESOURCES, INC.

First and Second Defendants and Appellants

Appeal from Judgment of Fourth District Court of Utah County,
Honorable Ernest F. Baldwin, Jr., Judge

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IN THE SUPREME COURT OF THE STATE OF UTAH

HIDDEN MEADOWS DEVELOPMENT COMPANY, :

Plaintiff and Respondent, :

DEE MILLS AND EVELYN I. MILLS, his :
wife, MILTON C. CHRISTENSEN, aka :
MILTON A. CHRISTENSEN, PARADISE :
VALLEY ESTATES, INC., LAKE MILLS :
COMPANY, a Limited Partnership, :

BRIEF OF APPELLANT

First Defendants and :
Appellants, :

and CAROLE LEE CHRISTENSEN, formerly CAROLE :
LEE DAVIS, ENVIRONMENTAL RESOURCES, :
INC., INTERNATIONAL ENVIRONMENTAL :
SCIENCES, a Limited Partnership, JOHN :
DENNIS HIGGINSON and SHERREL HIGGINSON, :
aka RAYMA SHERREL W. HIGGINSON, his :
wife, R. W. DAVIS LIVESTOCK COMPANY, :
VERL ROTH LISBERGER, EVE RHODES, :
EVELYN I. MILLS TRUST, FIRST SECURITY- :
BANK OF UTAH, N.A., and DALE A. ALLSOP :
and DONNA B. ALLSOP, his wife, :

NOS 15027
15157
15188

Second Defendants and :
Appellants. :

BRIEF OF MILTON C. CHRISTENSEN, aka MILTON A. CHRISTENSEN,
PARADISE VALLEY ESTATES, INC., LAKE MILLS COMPANY,
a Limited Partnership, CAROLE LEE CHRISTENSEN, formerly
CAROLE LEE DAVIS, and ENVIRONMENTAL RESOURCES, INC.

First and Second Defendants and Appellants

Appeal from Judgment of Fourth District Court of Utah County,
Honorable Ernest F. Baldwin, Jr., Judge

NATURE OF THE CASE

This is an action brought by way of a supplemental complaint to enforce the terms of a Decree of Specific Performance. In short, the original action was filed by Hidden Meadows Development Company (Successor of East Heber Development Company, hereinafter referred to as Hidden Meadows), respondent herein, against the first defendants, to determine the validity of an option granted by Dee Mills and Evelyn I. Mills in favor of the respondent.

Subsequent thereto, trial was held in the Fourth District Court, in and for Wasatch County, wherein the Honorable D. Frank Wilkins, District Judge, rendered judgment in favor of the first defendants and against the plaintiff (respondent herein) no cause of action. The court held that the option had been terminated, and that the Hidden Meadows, could not exercise the option.

Subsequently, Hidden Meadows appealed the lower court's decision to the Utah State Supreme Court. Hidden Meadows moved the trial court for an order granting supersedeas and the trial court ordered the same, but on the condition that Hidden Meadows file, and have

approved by the court, a bond in the sum of \$50,000 in accordance with Rule 73(d) of the Utah Rules of Civil Procedure. No supersedeas bond was ever filed or approved.

Prior to the original trial, Dee Mills and Evelyn I. Mills, had transferred and sold the real property in question to Milton A. Christensen, also known as Milton C. Christensen, Paradise Valley Estates, Inc., and Lake Mills Company, a limited partnership. Following the trial, the latter sold the property in question to second defendants. Thereafter, the Utah State Supreme Court reversed the lower court's decision and directed the lower court to enter a decree entitling Hidden Meadows to specific performance from Mills on the option to purchase the real property. (Hidden Meadows Development Company v. Mills, 29 Utah 2d 469, 511 P.2d 737 (1973))

Hidden Meadows then filed its supplemental complaint in the same action against the first defendants for specific performance consistent with the decision of the Utah State Supreme Court, and also named as second defendants those parties who had purchased the property in question, or succeeded to the same, after the judgment in the trial court on the original action and

prior to reversal by the Utah State Supreme Court. Hidden Meadows allege that any interest the first or second defendants, appellants herein, assert in the property is inferior and subordinate to the interest of itself, and that a decree of specific performance should be granted, allowing the respondent herein to purchase the property under the option agreement.

First defendants, Milton C. Christensen, also known as Milton A. Christensen, Paradise Valley Estates, Inc., and Lake Mills Company, a limited partnership, and second defendants, Carole Lee Christensen, formerly Carole Lee Davis, and Environmental Sciences, a limited partnership, allege that they were and are good faith purchasers of this property, and that Dee Mills and Evelyn I. Mills were not prohibited from selling or transferring the real property to them and conveying to them clear, complete and unencumbered title. It is further alleged that Dee Mills and Evelyn I. Mills were the legal title holders when they sold the property to the first defendants and the original judgment rendered by the District Court was self executing and cleared title in their names allowing the free alienation of the real property.

DISPOSITION IN THE LOWER COURT

The District Court, the Honorable Ernest F. Baldwin sitting without a jury, entered judgment for the plaintiff, Hidden Meadows, on its supplemental complaint and held that all purchasers were not bona fide innocent purchasers and were bound by the decision of the Utah State Supreme Court reversing the judgment of the Fourth District Court entered August 10, 1972 and the subsequent Decree of Specific Performance entered by the Fourth District Court on August 27, 1973.

RELIEF SOUGHT ON APPEAL

Reversal of the decree entered in the trial court after trial on this matter or, in the alternative, for remand to the lower court for application of proper measure of damages.

STATEMENT OF THE FACTS

On or about July 28, 1964, the appellants, Dee Mills and Evelyn I. Mills, gave to Hidden Meadow's predecessor in interest an option to purchase a tract of real property located in Wasatch County, Utah for a sum as specified in said Option, which Option was duly

recorded in the office of the Recorder of Wasatch County, Utah, on the 28th day of December, 1964, as Entry No. 86844. (F.1, R.224; R.9). Thereafter, on September 28, 1971, respondent notified said appellants Mills of its desire to exercise said option, but Mills refused to acknowledge the option and asserted that it had been terminated on September 4, 1971. (F.2, R.224)

On October 15, 1971, appellants, Dee Mills and Evelyn I. Mills conveyed the real property, the subject of the option, to appellants, Milton C. Christensen, also known as Milton A. Christensen, Lake Mills Company, a limited partnership, and Paradise Valley Estates, Inc. (F. 3, R.224; Ex 6-P, 7-P)

On or about December 10, 1971, Hidden Meadows commenced an action in the District Court of Wasatch County, State of Utah, seeking a decree of specific performance with respect to the option against the appellants, Dee Mills and Evelyn I. Mills, Milton C. Christensen, also known as Milton A. Christensen, Lake Mills Company, a limited partnership, and Paradise Valley Estates, Inc., and on December 10, 1971, Hidden Meadows

duly caused to be recorded in the office of the County Recorder of Wasatch County, Utah, a Notice of Lis Pendens recorded as Entry No. 96131 in Book 78, at pages 84-85 of said records (F. 4, R. 225). Subsequent to December 10, 1971, appellants, Carole Lee Davis, Environmental Resources, Inc., and International Environmental Sciences, a limited partnership, acquired an interest in said real property from appellants Dee Mills and Evelyn I. Mills, Milton C. Christensen, also known as Milton A. Christensen, Paradise Valley Estates, Inc., and Lake Mills Company, a limited partnership. (F. 5, R. 225) On August 10, 1972, the Fourth District Court in and for Wasatch County, Judge D. Frank Wilkins, presiding, entered judgment for the appellants, Dee Mills and Evelyn I. Mills, Milton C. Christensen, also known as Milton A. Christensen, Paradise Valley Estates, Inc., and Lake Mills Company, a limited partnership, holding that the option given to Hidden Meadows was null and void. (F. 6, R. 225)

Subsequent thereto Hidden Meadows timely appealed the judgment to the Utah State Supreme Court, Case No. 13076 (F. 7, R. 226-227). In addition, Hidden Meadows (appellant in the former case) moved the trial court for

an order granting supersedeas and the trial court ordered the same, but on the condition plaintiff file, and have approved by the court, a bond in the sum of \$50,000 in accordance with Rule 73(d) of the Utah Rules of Civil Procedure. No supersedeas bond was ever filed or approved (F. 8, R. 226; R. 39, 44, 45, 137).

On January 2, 1973 Mills entered into a Uniform Real Estate Contract with Carole Lee Davis, a single woman, thereby agreeing to convey any and all interest in the subject property to her, subject to the conditions set forth therein. (Ex 19D) Subsequent thereto, on January 3, 1973, Lake Mills, a limited partnership and Paradise Valley Estates, Inc., conveyed any and all interest in the subject real property to International Environmental Sciences, a limited partnership, of which Carole Lee Davis was a partner. (Ex 8-P, 9-P)

On July 5, 1973, the Utah State Supreme Court reversed the lower court's decision, and held the option given by appellants (respondents in former suit), Dee Mills and Evelyn I. Mills, to Hidden Meadows Development Company, was valid, and thereafter, remanded the case to the lower court for an appropriate order in consonance

with the opinion. (Hidden Meadows Development Company vs. Mills, supra.; F.9, R. 226) Said court further decreed that Milton C. Christensen, also known as Milton A. Christensen, Paradise Valley Estates, Inc., and Lake Mills Company, a limited partnership, and all claiming under them or any one of them as against the plaintiff and its assigns had no right, title or interest in said property or any part thereof. (F. 10, R. 226; R.50)

Thereafter, the appellants herein, Dee Mills and Evelyn I. Mills, failed and refused to comply with the Decree of Specific Performance entered August 27, 1973, on the grounds that said property, during the pendency of said appeal and in the absence of a supersedeas bond, was transferred to one or more of the following: Carole Lee Christensen, formerly Carole Lee Davis, Environmental Resources, Inc., International Environmental Sciences, a limited partnership, John Dennis Higginson and Sherrel Higginson, also known as Rayma Sherrel W. Higginson, Evelyn I. Mills Trust, First Security Bank of Utah, or Dale A. Allsop and Donna B. Allsop, his wife as bona fide purchasers (F. 11, R. 227). Subsequent thereto, a

Motion to Vacate Decree of Specific Performance was filed on behalf of appellants herein, (respondents in the former case) but that motion was never heard by the court. (R. 52).

ARGUMENT

The primary issue before this court is the duration of Lis Pendens and its effect on appeal when no supersedeas is filed. Emanating from this primary issue are numerous secondary questions which must necessarily be addressed in this brief and viewed by this court.

POINT I.

THE EFFECT AND DURATION OF LIS PENDENS TERMINATES ON FINAL JUDGMENT FROM THE LOWER COURT UNLESS SUPERSEDEAS BOND IS POSTED

The facts of the instant case clearly illustrate that the real property which is the subject of this action was conveyed by the owner thereof to those individuals and entities captioned as the "second defendants" following a final judgment in the lower court establishing the right of the owners, Dee Mills and Evelyn I. Mills and others so captioned as "first defendants" to alienate the real property and declaring the option to respondent herein, null and void.

and duration of Lis Pendens terminates when judgment is entered in the lower court and could not be extended by Hidden Meadows Development Company without the filing of the necessary supersedeas bond to preserve the status quo following judgment. It is obvious that the taking of an appeal does not alone operate as a supersedeas and a stay must be ordered and allowed in order to preserve the subject matter or res of the suit.

The statutory provision setting forth the requirements for Lis Pendens is contained in U.C.A. Section 78-40-2 (1953) as follows:

Lis Pendens. In any action affecting the title to, or the right of possession of, real property the plaintiff at the time of filing the complaint or thereafter, and the defendant at the time of filing his answer when affirmative relief is claimed in such answer, or at any time afterward, may file for record with the recorder of the county in which the property or some part thereof is situated a notice of the pendency of the action, containing the names of the parties the object of the action or defense, and a description of the property in that county affected thereby. From the time of filing such notice for record only shall a purchaser or encumbrancer of the property affected thereby be deemed to have constructive notice of the pendency of the action, and only of its pendency against parties designated by their real names. (Emphasis added.)

Although the parameters surrounding the filing and contents of the documents itself are covered in the statute, nothing is set forth regarding the total effect and duration of a Lis Pendens.

Generally, the doctrine of Lis Pendens continues operative during the pendency of the action or suit until it becomes final. Whether a Lis Pendens remains in effect and applies during the time for appeal depends on whether the appeal is regarded as a continuation of the suit. See 54 C.J.S. Lis Pendens, Section 36.

Whether or not the judgment of the lower court is final for the purpose of terminating Lis Pendens has not yet been decided by the Utah State Supreme Court.

It is abundantly clear that the law in the State of Utah requires that an appeal may be taken only from final orders and judgments in accordance with the Utah Rules of Civil Procedure. The Utah Rules of Civil Procedure, Rule 72(a) provides:

An appeal may be taken to the Supreme Court from all final orders and judgments in accordance with these rules; provided, that when other claims remain to be determined in the

proceedings, a party may preserve his right to appeal on the decided issue until a final determination of the other claims by filing with the trial court and serving on the adverse parties within the time permitted in Rule 73(a) a notice of his intention to do so.

The phrase "final judgment" was defined in the case of North Point Consolidated Irrigation Co. v. The Utah & Salt Lake Canal Co., 14 Utah 155, 46 P. 824 (1896), an action brought seeking an injunction restraining defendants from polluting a surplus canal and neighboring land. In holding that a party may not appeal an order pendente lite, which is not a final order or judgment, leaving issues remaining undecided, the court stated:

The word "final" or "final judgment" has a plain meaning. A judgment, to be final, must dispose of the case as to all the parties, and finally dispose of the subject matter of the litigation on the merits of the case. Champ vs. Kendrick, (Ind. Sup.) 30 N.E. 635. Bouvier defines a final judgment as used in opposition to interlocutory as "A final judgment is a judgment which ends the controversy between the parties litigant." The general rule recognized by the courts of the United States and by the courts of most, if not all of the states, is that no judgment or decree will be regarded as final, within the meaning of the statutes in reference to appeals, unless all the issues of law and of fact necessary to be determined were determined, and the case completely disposed of, so far as the court had power to dispose of it: Freem. Judgm. P. 34.

The policy of the laws of the several states and of the United States is to prevent unnecessary appeals. It is not the policy of courts to review cases by piecemeal. The interests of litigants require that cases shall not be prematurely brought to the highest court. The errors complained of may be corrected in the court in which they originated; or the party injured by them might, notwithstanding the injury, have final judgment in his favor. If a judgment interlocutory in its nature were the subject of appeal, each of such judgments rendered in the case could be brought before the appellate court, and litigants harassed by useless delay and expense, and the courts burdened with unnecessary labor. Freem. Judgm. P. 33. The reason of the rule is obvious. A party against whom an interlocutory order is made may have all his wrongs redressed and his rights protected upon a final hearing and therefore he has no ground of complaint. If these rights are not protected on a final hearing in the trial court, the error can be corrected on appeal from the final judgment.

The amendments to the Utah Rules of Civil Procedure have not altered nor attempted to change this general rule of law that an appeal lies only from a final order or judgment disposing of all issues in the action.

As additional support for this position see Oldroyd v. McCrea, 65 Utah 142, 235 P. 580 (1925), where in the court held that an order authorizing a receiver to issue and sell receiver's certificates displacing prior existing liens, not a final and appealable judgment as to

the State of Utah which had an existing mortgage lien on certain property and went on to state:

Under our constitution and statute, an appeal lies only from a final judgment. This court in numerous cases has held that a judgment to be final for purposes of an appeal must dispose of the case as to all of the parties and finally dispose of the subject matter of the litigation on the merits, or be a determination of the particular proceeding or action, or as sometimes expressed, the case put out of court.

When a judgment becomes final for all purposes has been a troublesome question for the courts and the decisions therefrom are not uniform. The principle that for purposes of the effect and duration of Lis Pendens, judgment becomes final when the subject matter of the litigation is determined on the merits is consistent with the finality of judgments in the State of Utah with regard to appeal.

One thing is clear, however, from a reading of the lis pendens statute, supra., and that is its purpose is to effectuate constructive notice of the pendency of an action and not actual notice, contrary to the lower courts' finding. (See: F. 12, R. 227) In addition, the

doctrine of lis pendens is to be viewed cautiously and its application strictly construed. As stated in 54 C.J.S.

Lis Pendens, Section 1(c):

The doctrine of lis pendens is not a favorite of the courts and is not to be extended without strict necessity. Since its operation may be harsh in particular instances and is arbitrary, it will not be given effect when the reasons which give rise to it do not require its enforcement, and the limitations to the rule will be observed with the same rigidity as exists in the application of the rule itself. On the other hand, the rule admits of but few exceptions.

Therefore, if lis pendens were terminated by the decision of the lower court or if its duration were affected or terminated by the failure of Hidden Meadows to file and post a supersedeas bond, then the lower court erred in holding that Carole Lee Christensen, formerly Carole Lee Davis and International Environmental Sciences, a limited partnership, were not bona fide innocent purchasers. (See Conclusions of Law 2, 3, R. 230)

The operation and effect of supersedeas or stay proceedings and its relationship to the duration of lis pendens on appeal is also a matter over which the courts are divided.

The law is clear that the mere notice and filing of an appeal does not automatically stay the judgment of the lower court while on appeal which decision is presumed valid and accurate. The requirements to effectively stay action upon, or execution of the judgment of the lower court, and to hold that judgment in abeyance while on appeal, are set forth in the Utah Rules of Civil Procedure as follows:

Rule 62(a) Stay Upon Entry of Judgment. Execution or other proceedings to enforce a judgment may issue immediately upon the entry of the judgment, unless the court in its discretion and on such conditions for the security of the adverse party as are proper, otherwise directs.

Rule 62(d) Stay Upon Appeal. When an appeal is taken the appellant by giving a supersedeas bond may obtain a stay, unless such a stay is otherwise prohibited by law or these rules. The bond may be given at or after the time of filing the notice of appeal. The stay is effective when the supersedeas bond is approved by the court.

Rule 73(d) Supersedeas Bond. Whenever an appellant entitled thereto desires a stay on appeal, he may present to the court for its approval a supersedeas bond which shall have such surety or sureties as the court requires. The bond shall be conditioned for the satisfaction of the judgment in full together with costs, interest, and damages for

delay, if for any reason the appeal is dismissed or if the judgment is affirmed, and to satisfy in full such modification of the judgment and such costs, interest, and damages as the appellate court may adjudge and award. When the judgment is for the recovery of money not otherwise secured, the amount of the bond shall be fixed at such sum as will cover the whole amount of the judgment remaining unsatisfied, costs on the appeal, interest, and damages for delay, unless the court after notice and hearing and for good cause shown fixes a different amount or orders security other than the bond. When the judgment determines the disposition of the property in controversy as in real actions, replevin, and actions to foreclose mortgages or when such property is in the custody of the sheriff or when the proceeds of such property or a bond for its value is in the custody or control of the court, the amount of the supersedeas bond shall be fixed at such sum only as will secure the amount recovered for the use and detention of the property, costs of the action, costs on appeal, interest, and damages for delay.

Rule 73(e). Failure to File or Insufficiency of Bond. If a bond on appeal or a supersedeas bond is not filed within the time specified or if the bond filed is found insufficient, and if the record on appeal has not been filed in the Supreme Court, a bond may be filed at such time before the record is so filed as may be fixed by the District Court. After the record is so filed, application for leave to file a bond may be made only in the Supreme Court.

The District Court's Order Granting Supersedeas (R. 44) provided that the plaintiff file and have approved

by this court a bond in the sum of \$50,000 conditioned in accordance with Rule 73(d) of the Utah Rules of Civil Procedure. The plaintiff Hidden Meadows failed to abide by the court's order, and failed to abide by the Utah Rules of Civil Procedure.

The general function of a supersedeas bond and its effect upon the enforcement of a judgment is generally set forth in 4 AmJur 2d Appeal and Error, Section 371 where it is stated:

The function of a supersedeas is to stay the enforcement of a judgment or decree of the court below brought up for review by appeal to effect a suspension of the power of the lower court to issue execution or other process or to execute such process if already issued. Its effect is to restrain the successful party and the lower court from taking affirmative action to enforce the judgment or decree. The supersedeas does not operate against the judgment itself, but against its enforcement. As a general rule, the supersedeas prevents all further proceedings in a subordinate court in the suit in which the judgment, order, or decree is rendered or made, except such as are necessary to preserve the rights of parties. (Emphasis added.)

The general effect of a supersedeas bond is disclosed in 4-A C.J.S., Appeal and Error, Section 662 where it is stated:

The general rule is that the purpose or effect of a supersedeas or stay is to suspend or stay proceedings in the trial court, to preserve the status quo pending the determination of the appeal or proceeding in error, and to preserve to appellant the fruits of a meritorious appeal where they might otherwise be lost to him.

The failure to file a supersedeas bond as required by the lower court's Order and by the Rules of Civil Procedure validates any action taken by Dee Mills and Evelyn I. Mills in transferring and selling the property which was the subject of the original option. Since the decision in the lower court was in their favor, they were free to do with this property as they desired unless such action was stayed by a supersedeas bond.

The case law in the State of Utah is consistent with the general law in allowing the prevailing party in a lower court to enforce that judgment or maintain a status quo until a supersedeas bond is filed in the Supreme Court staying all action between or among the parties in the lower court. In Skeen v. Pratt, 87 Utah 121, 48 P.2d 457 (1935), the Utah Supreme Court addressed itself to the purpose of a supersedeas bond in an action seeking a Writ of Mandamus to command the District Court of Weber County

to vacate a sheriff's sale of real property. In holding that the lower court still had jurisdiction to hear a motion to vacate the sheriff's sale for impropriety, the Utah State Supreme Court cited with approval, Bancroft's Code Practice and Remedies, Vol. 8 page 8684, Section 656 wherein it is stated:

In the case of an appeal without supersedeas or stay, the judgment or order appealed from is enforceable as though no appeal had been taken.

The court went on to state:

The citation of additional authorities on this phase of the case would seem unnecessary, because if an appeal without a supersedeas bond wholly divests the trial court of power to enforce the judgment or decree appealed from, the giving of a supersedeas bond would be meaningless. The sole purpose of a supersedeas bond is to stay the enforcement of the judgment or decree pending the appeal.

Therefore, respondents failure to file and post the necessary supersedeas returned the true owners of the property to the same status they were in prior to the commencement of the action. Only if the lis pendens were effective through appeal would the lower court be correct in ruling that International Environmental Sciences, and Carol Lee Christensen were not bona fide purchasers because

of the constructive notice provided by the lis pendens, which could not continue because Hidden Meadows failed to file supersedeas. The record and transcript of testimony is absolutely void of any evidence of personal or actual knowledge of the appeal on the part of Carole Lee Christensen, formerly Carole Lee Davis.

There is substantial authority for the proposition that one who acquires rights in the subject matter of litigation pending appeal takes the property irrespective of the decision on appeal especially where the appellant fails to file a supersedeas.

This law is based upon the theory that in order for the lis pendens to be effective on appeal, a supersedeas must be filed, thereby preserving the status of the case below and suspending all proceedings with regard to the judgment and enforcement thereof.

A case directly on point is Chicago & N.W. Railway Co. v. Garrett Strickler et. al, v. Chatterton, 339 Ill. 297, 87 N.E. 1009 (1909), where appellants purchased certain real property from the prevailing party following a divorce action but prior to its reversal on appeal.

In reversing the lower court's ruling setting aside the conveyance the court stated:

When appellants bought the property in controversy, the decree was in force. Had they bought before the writ of error was sued out, they would have acquired a title free from any claim of the appellee for dower, for the law is well settled that, when a decree affecting the title to property has been rendered by a court of equity, the rights of a purchaser in good faith, relying upon the decree before any writ of error is prosecuted or other action taken to avoid it, will be protected, notwithstanding the decree is afterward reversed. *Wadhams v. Gay*, 73 Ill. 415; *Barlow v. Standford*, 82 Ill. 298; *Hannas v. Hannas*, 110 Ill. 53; *Lambert v. Livingston*, 131 Ill. 161, 23 N.E. 352; *Hammond v. People*, 178 Ill. 503, 53 N.E. 308.

Assuming, but not deciding, that appellants had notice of the pendency of the writ of error, we are brought to the question whether they took subject to the final disposition of the case. The writ of error was not a supersedeas. The decree was therefore not affected by it, but, until the judgment of reversal was rendered, was valid and effectual, entitled to full faith and credit in all courts, and enforceable by all appropriate means. Had it required the payment of alimony, such payment might have been enforced by execution or attachment in spite of the pendency of the writ of error. If it had been a decree of foreclosure, it

might have been executed during the pendency of the writ of error by a sale of the premises involved, and the purchaser, if not a party to the suit, would have acquired a valid title not subject to be divested by the reversal of the decree. At common law the writ of error was itself a supersedeas, and no bail was required. A defendant, by suing out a writ of error, could stop all proceedings in execution of the judgment without giving any security whatever. 1 Tidd's Pr. 530; 2 Tidd's Pr. 1149; Bacon's Abridgment, Supersedeas, D, 4; Omaha Hotel Co. v. Kountze, 107 U.S. 378, 2 Sup. Ct. 911, 27 L. Ed. 609. To avoid this evil various acts of parliament were passed requiring security in certain cases in order that the writ of error should operate as a supersedeas. Section 106 of the practice act (Hurd's Rev. St. 1908, c. 110) provides that no writ of error shall operate as a supersedeas unless the Supreme or Appellate Court as may be, or some judge thereof in vacation, after inspecting a copy of the record, shall so order, and the plaintiff in error shall file a bond as in case of appeal. Without such supersedeas, the doctrine of lis pendens has no application to a writ of error. "The writ of error without a supersedeas does not, of itself, stay the proceeding, and to argue otherwise would be to contend that a party might have the same relief upon a writ of error without supersedeas and without bond as he would be entitled to upon an appeal." Lancaster v. Snow, 184 Ill. 163, 56 N.E. 416. Everybody was entitled

to act upon the decree as a valid decree, and rights acquired in good faith by strangers to the decree, whether with or without notice of the writ of error, cannot be affected by its reversal. The title of the appellants, Jones and Strickler, was not, therefore, subject to appellee's claim of dower.

The order of the superior court will be reversed and the cause remanded, with directions to dismiss appellee's cross-petition, and for further proceedings consistent with this opinion.

Reversed and remanded, with directions.

Also see Cairo Lumber Co. v. Corwin, 325 Ill. App. 319, 6 N.E. 2d 110 (1945); Miller v. Dixon, 2 Kan. 445, 42 P. 1014 (1895).

It always has been and ought to remain "the policy of the law in this country to provide for free alienation of land"; especially where a self-executing judgment such as in the instant case confirms ownership and the right to convey property on the true and rightful owner. If it were not for the requirement of supersedeas in order to effectuate a stay on appeal, the entire risk would be placed on the prevailing party whose judgment is presumed valid and accurate. The failure on the part of Hidden Meadows to properly prosecute its appeal and obtain

a stay by filing and posting the appropriate supersedeas bars by estoppel Hidden Meadows from now seeking specific performance. It may properly have a remedy in damages against Mills under the option but it certainly shouldn't recover the real property conveyed to a third party, the return of which would produce inequitable results to all subsequent purchasers.

POINT II.

IN ALL REMAINING ASPECTS OF THIS
APPEAL, THESE APPELLANTS ADOPT THE
POINTS AND ARGUMENTS OF THE APPELLANT
INTERNATIONAL ENVIRONMENTAL SCIENCES
WHOSE POSITION IS IDENTICAL WITH THESE
APPELLANTS.

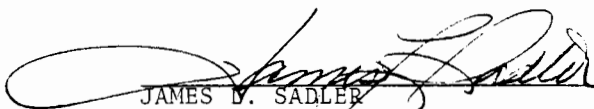
CONCLUSION

Appellants assert that the lis pendens filed by Hidden Meadows was terminated by the final judgment of the lower court and in the failure of Hidden Meadows to file and post a supersedeas staying the effect of the lower court's judgment, which is presumed valid is evidenced by the necessity for posting supersedeas to effectuate a stay

while on appeal. If in fact, Hidden Meadows has a remedy, it is against Mills for monetary damages and not against third persons for specific performance.

RESPECTFULLY submitted this 3rd day of February, 1978.

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MAILING CERTIFICATE

I hereby certify that copies of the foregoing Brief of Appellant were mailed, postage prepaid, this 13th day of February, 1978 to the following:

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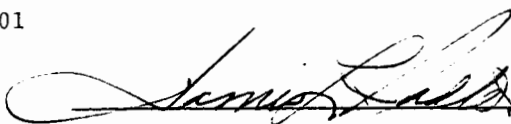
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